UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,862	01/09/2002	Nobuhiro Kawamura	FUJY 19.313	8426

26304 7590 07/18/2006

KATTEN MUCHIN ROSENMAN LLP
575 MADISON AVENUE
NEW YORK, NY 10022-2585

EXAMINER	
JEAN GILLES, JUDE	
ART UNIT	**PAPER NUMBER**
2143	

DATE MAILED: 07/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/043,862	KAWAMURA, NOBUHIRO	
	Examiner	Art Unit	
	Jude J. Jean-Gilles	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 December 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-25* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *13 December 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

This office action is responsive to communication filed on 05/01/2006. Claimed priority is granted from foreign application No: 2001-285176 with a priority date of 09/19/2001.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1-25** are rejected under 35 U.S.C. 102(b) as being anticipated by Yamamura et al (Yamamura), Patent No. 6,028,838.

Regarding **claim 1**, Yamamura discloses a providing service control device comprising:

a module obtaining performance information indicating a state of a traffic congestion from a monitor target network (column 30, lines 50-67; column 31, lines 1-33);

a module storing information, of a service level agreement for a user, including service levels substitutionally providable for the user, the service levels providable corresponding to the state of the traffic congestion (column 31, lines 1-46); and

a control module determining the substitutionally providable service for every user on the basis of the obtained performance information and the contract data, and

having the corresponding service provided to a client terminal used by the user (column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 2**, Yamamura discloses a providing service control device according to claim 1, wherein said monitored target network is an IP network including the Internet and a provider network, and said providing service control device is disposed in said provider network (column 1, lines 12-26).

Regarding **claim 3**, Yamamura discloses a providing service control device according to claim 1, wherein said control module controls at least one of a network device and a server within a provider network, and has the corresponding service provided to said client terminal used by the user (column 6, lines 52-67; column 7, lines 1-20).

Regarding **claim 4**, Yamamura discloses a providing service control device according to claim 3, wherein said control module changes at least one of a data size and a data quality of data transmitted by said server to said client terminal as the substitutionally providable service (column 6, lines 52-67; column 7, lines 1-20).

Regarding **claim 5**, Yamamura discloses a providing service control device according to claim 4, wherein the changed data to be transmitted by said server to said client terminal are content data registered previously in said server by a content provider (column 6, lines 52-67; column 7, lines 1-20).

Regarding **claim 6**, Yamamura discloses a providing service control device according to claim 3, wherein said control module has a transmission band of an

Internet access line changed that is utilized by said client terminal (column 1, lines 12-26).

Regarding **claim 7**, Yamamura discloses a providing service control device according to claim 1, further comprising a module notifying said client terminal of the obtained performance information (column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 8**, Yamamura discloses a providing service control device according to claim 7, further comprising a module receiving a service level change request that responds to the performance information of which said client terminal has been notified (column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 9**, Yamamura discloses a network system comprising:

(A) a providing service control device comprising:

(a) a module obtaining performance information indicating a state of a traffic congestion from a monitored target network (column 30, lines 50-67; column 31, lines 1-33);

(b) a module storing information, of a service level agreement for a user, including service levels substitutionally providable for the user, the service levels providable corresponding to the state of the traffic congestion (column 30, lines 50-67; column 31, lines 1-33); and

(c) a control module determining the substitutionally providable service on the basis of the obtained performance information and the service level agreement, and having the corresponding service provided to a client terminal used by the user (column 30, lines 50-67; column 31, lines 1-46); and

(B)said client terminal comprising:

(d) a module independently obtaining performance information indicating a state of a traffic congestion from said monitored target network (column 30, lines 50-67; column 31, lines 1-33); and

(e) a module executing a service level change request on the basis of the independently obtained performance information (column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 10**, Yamamura discloses a network system according to claim 9, wherein said providing service control device further comprises a module notifying said client terminal of the obtained performance information, and said client terminal further comprises a module receiving the performance information of which said providing service control device has notified (column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 11**, Yamamura discloses a network system according to claim 10, wherein said providing service control device further comprises a module receiving the service level change request that responds to the performance information of which said client terminal has been notified (column 30, lines 50-67; column 31, lines 1-67), and

said client terminal further comprises a module executing the service level change request based on the performance information of which said providing service control device has notified (column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 12**, Yamamura discloses a network system according to claim 11, wherein said client terminal further comprises a module controlling said client terminal itself on the basis of any one of the independently obtained performance information and the performance information of which said providing service control device has notified (column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 13**, Yamamura discloses a network system according to claim 9, wherein said monitored target network is an IP network including the Internet and a provider network, and said providing service control device is disposed in said provider network (column 1, lines 12-26).

Regarding **claim 14**, Yamamura discloses a network system according to claim 9, wherein said control module controls at least one of a network device and a server within a provider network, and has the corresponding service provided to said client terminal used by the user (column 6, lines 52-67; column 7, lines 1-20).

Regarding **claim 15**, Yamamura discloses a network system according to claim 14, wherein said control module changes at least one of a data size and a data quality of data transmitted by said server to said client terminal as the substitutionally providable service (column 6, lines 52-67; column 7, lines 1-20; column 30, lines 50-67).

Regarding **claim 16**, Yamamura discloses a network system according to claim 15, wherein the changed data to be transmitted by said server to said client terminal are content data registered previously in said server by a content provider (column 6, lines 52-67; column 7, lines 1-20).

Regarding **claim 17**, Yamamura discloses a network system according to claim 14, wherein said control module has a transmission band of an Internet access line changed that is utilized by said client terminal (column 1, lines 12-26).

Regarding **claim 18**, Yamamura discloses a providing service control method comprising:

obtaining performance information indicating a state of a traffic congestion from a monitored target network (column 30, lines 50-67; column 31, lines 1-46);

storing information, of a service level agreement for a user, including service levels substitutionally providable for the user, the service levels providable corresponding to the state of the traffic congestion (column 30, lines 50-67; column 31, lines 1-46); and

determining the substitutionally providable service for every (the) user on the basis of the obtained performance information and the service level agreement, and having the corresponding service provided to a client terminal used by the user (column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 19**, Yamamura discloses a providing service control method according to claim 18, further comprising controlling at least one of a network device and a server within a provider network, and having the corresponding service provided to said client terminal used by the user (column 6, lines 52-67; column 7, lines 1-20).

Regarding **claim 20**, Yamamura discloses a providing service control method according to claim 19, further comprising changing at least one of a data size and a

data quality of data transmitted by said server to said client terminal as the substitutionally providable service (column 6, lines 52-67; column 7, lines 1-20).

Regarding **claim 21**, Yamamura discloses a providing service control method according to claim 20, wherein the changed data to be transmitted by said server to said client terminal are content data registered previously in said server by a content provider (column 6, lines 52-67; column 7, lines 1-20).

Regarding **claim 22**, Yamamura discloses a providing service control method according to claim 19, further comprising having a transmission band of an Internet access line changed that is utilized by said client terminal (column 1, lines 12-26).

Regarding **claim 23**, Yamamura discloses a providing service control method according to claim 18, further comprising notifying said client terminal of the obtained performance information (column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 24**, Yamamura discloses a providing service control method according to claim 23, further comprising receiving a service level change request that responds to the performance information of which said client terminal has been notified(column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 25**, Yamamura discloses a readable-by-computer recording medium recorded with a program read by a computer to execute:

obtaining performance information indicating a state of a traffic congestion from a monitored target network (column 30, lines 50-67; column 31, lines 1-46);

storing information, of a service level agreement for a user, including service levels substitutionally providable for the user, the service levels providable

corresponding to the state of the traffic congestion (column 30, lines 50-67; column 31, lines 1-46); and

determining the substitutionally providable service for every (the) user on the basis of the obtained performance information and the service level agreeement, and having the corresponding service provided to a client terminal used by the user (column 30, lines 50-67; column 31, lines 1-46).

Conclusion

3. Any inquiry concerning this communication or earlier communications from examiner should be directed to Jude Jean-Gilles whose telephone number is (571) 272-3914. The examiner can normally be reached on Monday-Thursday and every other Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley, can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3719.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Jude Jean-Gilles

Patent Examiner

Art Unit 2143

DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

JJG

June 26, 2006